IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 680 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHUKAR KISHAN NAYAR
Versus
STATE OF GUJARAT

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Appearance :
MR DIVYESH JOSHI for MR JB PARDIWALA for Appellant.
MR PD BHATE, APP for Opponent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/12/2007

ORAL JUDGMENT

1. Appellant was the original accused no.2 in Sessions Case No.66 of 1996. All accused, except accused no.7, came to be convicted by learned Additional Sessions Judge, Navsari by impugned judgment dated 5-7-1997. The present appellant and other convicted accused were sentenced to R.I. for three years and directed to pay fine of Rs.2,000/-.

The accused were facing charge under Section 399 of the Indian Penal Code.

2. The prosecution case was that on 3rd February 1996, in the early morning hours at about 4 O' Clock, the police party, upon information that some accused have gathered for committing dacoity, went to a spot on National Highway No.8 near UPL Company, near Vapi. They found that some 5-6 persons were hiding in the bushes with weapons and were ready to commit dacoity. Upon seeing the police jeep, the persons gathered there, sat with their weapons in the car parked on the side of the road. The police jeep, however, intercepted the vehicle and all except original accused no.7 were caught on the spot. They were found to be carrying weapons such as sword, knives, daggers and pipes etc. The Maruti car in which they were trying to escape, had in the front portion number plate of GJ-5 N-3102, which was written by hand. Upon removing the number plate, it was found that at the back portion it had printed number of MVF 8804. This was also tampered with. Back portion of the car had no number plate. From the car, the police found a service card of one Jigar Motors Private Limited, on which name of one Mr.Naginbhai S. Panchal was written. The card carried the number of the vehicle as GJ-1 RR-5752. The engine number and chassis number of the car were also written. On the back side of the car, one number plate of GJ-1 RR-5752 was found.

3. Upon completion of the trial, learned Additional Sessions Judge convicted all, except accused no.7, finding that the charge under Section 399 of the Indian Penal Code was established.

4. At the outset, it may be noted that majority of the panch witnesses had turned hostile. However, the prosecution seeks to establish the case

through police witnesses and other attendant circumstances brought on record.

5. P.W.1, Gumansinh Jadeja, Exh.13 was a panch witness, in whose presence the police had drawn the panchnama of recovery of the weapons and the car involved in the offence. He, however, did not support the prosecution.

6. P.W.2, Ketanbhai, Exh.16 was the owner of Jigar Motor Service Station. He identified the accused before the Court, as those persons who were working at his service station on contract basis. He stated that a car of one Naginbhai Panchal bearing registration No. GJ-1 RR-5752 had come to his service station for service, which was given by the owner of the car to him on 2nd February 1996. On 3rd February 1996, when he went to his service station, he was called at the police station.

7. P.W.3, Gulabbhai Raghubhai, Exh.19 was working at Jigar Motors as a driver. He also knew the accused since they were working in Jigar Motors on contract basis. He stated that on 2nd February 1996 Maruti Fronti Car No.GJ-1 RR-5752 had come for service. However, next day, when he went to the garage, he did not find the car he therefore asked the watchman and was told that the car had been taken by the people working on contract. From then on this witness did not support the prosecution and he was, therefore, declared hostile and was cross-examined by the public prosecutor.

8. Indrasinh Pratapsinh, P.W.4, Exh.20 was a Head Constable, who was on 3rd February 1996 engaged in night patrolling duty at Vapi GIDC. Upon tip-off to the Police Inspector, Shri Chaudhary, he along with other police personnel went towards UPL Company's premises on National

Highway No.8. With the help of the light of the vehicles, he saw that six persons were hiding in the bushes. Upon seeing the police vehicle they tried to run away in the Maruti car. Their vehicle, however, took over the car and arrested the persons. These persons were carrying weapons such as sword, dharia etc. All the accused were carrying deadly weapons. In particular, the appellant herein was found to be carrying a dagger. Others had knife, sword, iron pipes, dharia etc. These weapons were seized after drawing panchnama.

9. P.W.5, Raghuvirsinh Zala was examined at Exh.21. He was a PSI, who had along with other police personnel intercepted the accused. He also gave similar version of the incident.

10. P.W.6, Exh.25, Ishwarbhai Nagjibhai Desai was also PSI, who had accompanied the police party. He stated that near the premises of UPL Company, the accused persons about five in number had come out, who were hiding behind the bushes. However, seeing that the police vehicle was approaching, they set in Maruti car and started the car but the police vehicle immediately overtook the car and arrested the persons, who were found to be carrying weapons such as swords, knives, daggers etc. He found that in the front, the car had a number of GJ-5 N-3102.

11. On the basis of above evidence, the prosecution seeks to support the charge.

12. Appearing on behalf of the appellant, learned advocate, Shri Divyesh Joshi for Shri Pardiwala submitted that evidence on record was insufficient to convict the appellant. He submitted that there were number of contradictions in different versions given by different witnesses. He submitted that all the panch witnesses had turned hostile.

He further pointed out that there was no evidence to suggest that the accused had gathered only for committing dacoity. Simply because they were found under suspicious circumstances, carrying weapons, there can be no presumption that they had gathered only for committing dacoity. According to him, therefore, conviction under Section 399 of the Indian Penal Code was not warranted.

13. Reliance was placed on the decision of the Apex Court in the case of **Chaturi Yadav and Others V. State of Bihar**, reported in **AIR 1979 SC 1412** as well as in the case of **Suleman and Another v. State of Delhi** reported in **AIR 1999 SC 1707**, further reference to which will be made at later stage.

14. On the other hand, learned APP, Shri Bhate opposed the appeal. He submitted that learned trial Judge has given cogent reasons. He submitted that there was sufficient evidence on record to prove the charge. Even if the panch witnesses turned hostile, there was sufficient material against the accused in form of depositions of police witnesses as well as from the owner of Jigar Motors.

15. From the evidence on record, it can be seen that though panch witnesses have turned hostile, evidence of police witnesses and that of P.W.2, Ketanbhai, owner of Jigar Motors throws sufficient light on the nature of the incident.

16. As per the evidence, the police received information that some five or six persons have gathered near National Highway close to UPL Company premises for committing dacoity. The police party, therefore, went to the spot at about 4 O' Clock in the morning on 3rd February 1996. They found that some five to six persons were hiding behind the

bushes and were carrying weapons such as sword, dharia, daggers and knives. Upon seeing the police jeep, the accused tried to run away from the spot. They hurriedly set in the car parked on the side of the road. They were, however, intercepted by the police and caught red handed. They were found to be carrying deadly weapons. Number plate of the vehicle was also tampered. The vehicle carried service note of Jigar Motors. Ketanbhai, P.W.2 stated that one Maruti car No.GJ-1 RR-5752 had been given to him for servicing on 2nd February 1996. He also identified the accused as those who were working at his service station on contract basis. Gulabbhai, P.W.3, who was working as a driver at Jigar Motors, also identified the accused similarly. He also stated that the said Maruti car had come for servicing on 2nd February 1996. Next day, i.e. on 3rd February 1996, when he went to the service station, he did not find the car. Upon inquiry, he found that the car was taken by the accused. This witness though thereafter turned hostile and did not support the prosecution, earlier portion of his deposition need not be completely discarded. It, thus, clearly emerges that the accused who were working as temporary workers at Jigar Motors, had used a Maruti car which had come for service and had gathered near the National Highway carrying deadly weapons. They were found hiding behind the bushes. Upon seeing the police vehicle they tried to run away, sitting in the car. Maruti car which they were using had tampered number plates. All these circumstances, which have been established beyond reasonable doubt, would lead to an inescapable conclusion that the accused had gathered for committing the offence of dacoity. Their conviction under Section 399 of the Indian Penal Code, therefore, was justified.

17. In the case of **Chaturi Yadav and Others V. State of Bihar** (supra), the Apex Court observed that mere fact that the accused were found at 1 a.m. did not, by itself, prove that they had assembled for the

purpose of committing dacoity or for making preparations to accomplish that object. It was found that one accused was found in possession of gun with live cartridge. It is observed that the school was quite close to the market and, therefore, it is difficult to believe that the appellants would assemble at such a conspicuous place with an intention to commit dacoity.

17.1 In the present case, however, I find that there are other attendant circumstances which establish the guilt of the accused. Firstly, they were found at about 4 O' Clock in the morning. They were hiding behind the bushes near the National Highway. All accused were carrying deadly weapons such as sword, knife, dagger, dharia, iron pipe etc. Upon seeing the police jeep, they tried to run away. The car in which they tried to escape was unauthorizedly taken away from the service station where they were working. They had also tampered with number plate of the car.

18. In the case of **Suleman and Another v. State of Delhi** (supra), the Apex Court found that the prosecution relied on the evidence of a Head Constable, who had allegedly heard the accused from outside of Dharam Shala where they had gathered that they were planning to commit dacoity. The Apex Court, however, found that the evidence was not reliable, particularly, on account of non-examination of ASI, who had accompanied the said witness.

18.1 The case is based entirely on facts involved therein. As discussed previously, the facts of this case are quite different. The circumstances, which the prosecution has succeeded in establishing on record leave no manner of doubt that the accused had collected for committing dacoity. The offence of dacoity is viewed extremely seriously. Not only its

attempt but even preparation is made punishable as an exception to the normal rule of criminology, as preparation of an offence is normally not punishable. Considering all these aspects of the matter, I do not find that a further lenient view can be taken. There is, therefore, no scope for reduction of the punishment, contrary to what is prayed for by the counsel.

19. Under the circumstances, appeal is dismissed. Bail is cancelled. Appellant shall, however, have time upto 31st January 2008 to surrender before the police.

(Akil Kureshi, J.)

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